

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 18<sup>TH</sup> DAY OF APRIL 2023 / 28TH CHAITHRA, 1945

CRL.MC NO. 663 OF 2023

ST 7467/2005 OF JUDICIAL MAGISTRATE OF FIRST CLASS

CHAVAKKAD, S.T.NO.8516/2011 OF JFCM, CHAVAKKAD

LP 38/2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,CHAVAKKAD

CR.NO.620/2005 OF CHAVAKKAD POLICE STATION

PETITIONER/ACCUSED NO.3:

BADUSHA, AGED 37 YEARS  
S/O MOOSA RESIDING AT KERANTAKATH HOUSE,  
THIRUVATHRA DESOM, MANATHALA VILLAGE, CHAVAKKAD  
TALUK, THRISSUR, PIN - 680506

BY ADV RAJIT

RESPONDENT/STATE:

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031

SR.PP- SMT. SREEJA. V

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 18.04.2023, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

Cr1.M.C.No.663/2023

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**ORDER**

Dated this the 18<sup>th</sup> day of April, 2023

This Cr1.M.C has been filed to quash the proceedings against the petitioner in L.P.No.38/2015 on the files of the Judicial First Class Magistrate Court, Chavakkad (for short 'the trial court') on the ground of the acquittal of the remaining accused.

2. The petitioner is the accused No.3 in S.T.No.7467/2005 on the file of the trial court. Altogether, there were 16 accused. Except the petitioner and the accused No.14, all others have faced trial. The offences alleged are punishable under Sections 143, 147, 225B, 353 read with 149 of the IPC.

3. The prosecution allegation is as follows:

On 30.09.2005 at about 5.45 pm, the accused persons had conducted a procession through the public road in front of the Kottappuram Fisheries School, in connection with the victory of one Nazari Moidunny of LDF, in the election from Ward No.27 of

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Chavakkad Municipality and CW1 to CW3 were on law and order duty. The accused No.1 caused obstruction to the traffic and also misbehaved with drivers of the vehicles. In order to avoid further issues, CW1 took the accused No.1 into custody and brought to the police jeep. While so, the other accused had formed an unlawful assembly with the common object of rescuing the accused No.1, assaulted CW1 to CW3 and forcibly taken away the accused No.1 from the custody and thereby committed the offences.

4. The trial court, after a full-fledged trial found that the accused are guilty of the offences and they were convicted and sentenced for the offences punishable under Sections 143, 147, 225B, 353 read with 149 of the IPC. However, in appeal, the III<sup>rd</sup> Additional Sessions Judge, Thrissur (for short 'the appellate court') found that the prosecution has failed to prove the offences against the accused and accordingly, they were acquitted. Annexure 3 is the said judgment. The case against the petitioner and the accused No.14 was split up and refiled as S.T.No.8516/2011. According to the petitioner, in view of the

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acquittal of the remaining accused, the substratum of the prosecution case is dislodged. It is in these circumstances, the petitioner has filed this CrI.M.C., invoking Section 482 of the Cr.P.C.

5. I have heard Sri. Rajit, the learned counsel for the petitioner and Smt. Sreeja V., the learned Senior Public Prosecutor.

6. To prove the prosecution case, PW1 to PW3 were examined. PW1 was the Head Constable, Chavakkad Police Station who registered Ext.P1 FIR based on Ext.P5 FI statement of PW3. PW2 was the Additional Inspector of Police, Chavakkad who conducted the investigation and PW3 was the defacto complainant. The appellate court on evaluation of the evidence found that PW3 admitted during evidence that he was not on law and order duty on the date of the incident in connection with the procession in question and hence, Section 353 is not attracted. The appellate court further found that, apart from PW3, there is no independent witness. The appellate court also found that there is no proper identification of the accused. When it is found

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that PW3 was not on duty, Section 353 of the IPC is not attracted. Since all the accused except the petitioner and the accused No.14 were acquitted, Sections 143 and 147 read with 149 of the IPC cannot be invoked against the petitioner. A reading of Annexure 3 judgment would show that the substratum of the prosecution case is dislodged.

7. The Apex Court in ***Sahadevan & another v. State of Tamil Nadu*** [2012 (6) SCC 403] has held that, if the entire prosecution case has been found to be unreliable and the prosecution as a whole has not been able to prove its case beyond reasonable doubt, then benefit should accrue to all the accused persons and not merely to the accused who faced trial. The Full Bench of this Court in ***Moosa v. Sub Inspector of Police*** [2006 (1) KLT 552] in paragraph 50 held that in a case where the very substratum of the case is lost by the acquittal of the co-accused, the power under Section 482 of the Cr.P.C. could be invoked.

For these reasons, I am of the view that this is a fit case where the jurisdiction vested with this Court under Section 482 of Cr.P.C could be invoked. Accordingly, all further proceedings

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against the petitioner in L.P.No.38/2015 arising from S.T.No.8516/2011 on the files of the trial court hereby stands quashed. The Crl.M.C is allowed.

sd/-

**DR. KAUSER EDAPPAGATH**

**JUDGE**

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**APPENDIX OF CRL.MC 663/2023**

PETITIONER ANNEXURES

- Annexure 1                    A CERTIFIED COPY OF THE FINAL REPORT IN  
CRIME 620/2005 FILED BY THE CHAVAKKAD  
POLICE BEFORE THE LEARNED JUDICIAL FIRST  
CLASS MAGISTRATE COURT, CHAVAKKAD DATED  
13.10.2005
- Annexure 2                    A CERTIFIED COPY OF THE JUDGMENT DT.  
31.12.2011 OF THE LEARNED JFCM COURT,  
CHAVAKKAD IN S.T. NO.7467/2005
- Annexure 3                    A TRUE COPY OF THE JUDGMENT DT.  
06.05.2019 OF THE LEARNED IIIRD  
ADDITIONAL SESSIONS COURT, THRISSUR IN  
CRL.A. NO.21/2012